

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
EUREKA DIVISION

JOSE RAMIREZ,

Petitioner,

vs.

K. HOLLAND,

Respondent.

No. C 16-0737 NJV (PR)

**ORDER FOR RESPONDENT  
TO SHOW CAUSE**

Dkt. Nos. 2, 5, 7

Petitioner, a state prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner was convicted in Santa Clara County, which is in this district, so venue is proper here. See 28 U.S.C. § 2241(d). Petitioner has applied for leave to proceed in forma pauperis and consented to the jurisdiction of a Magistrate Judge.

**BACKGROUND**

Petitioner pled guilty to committing lewd acts on a child. Petition at 2. He was sentenced to twenty years in prison. *Id.* at 1. His direct appeal was denied as were several state habeas petitions. *Id.* at 3.

**DISCUSSION**

**A. Standard of Review**

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of habeas corpus filed by a prisoner who is in state custody

pursuant to a judgment of a state court must “specify all the grounds for relief available to the petitioner ... [and] state the facts supporting each ground.” Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. “[N]otice’ pleading is not sufficient, for the petition is expected to state facts that point to a ‘real possibility of constitutional error.’” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir. 1970)).

## **B. Legal Claims**

As grounds for federal habeas relief, petitioner asserts that: (1) counsel for his plea was ineffective; (2) his appellate counsel was ineffective; and (3) the trial court erred in ordering petitioner to have no contact with the victim in violation of the Fourteenth Amendment. Liberally construed, these claims are sufficient to require a response.

## **CONCLUSION**

1. Petitioner’s motion to proceed in forma pauperis (Docket Nos. 2, 5, 7) is **GRANTED**.

2. The clerk shall serve by regular mail a copy of this order, the petition and all attachments thereto and a Magistrate Judge jurisdiction consent form on respondent and respondent’s attorney, the Attorney General of the State of California. The clerk also shall serve a copy of this order on petitioner.

3. Respondent shall file with the court and serve on petitioner, within fifty-six (56) days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court and serving it on respondent within twenty-eight (28) days of his receipt of the answer.

4. Respondent may file a motion to dismiss on procedural grounds in lieu of an

1 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing  
2 Section 2254 Cases. If respondent files such a motion, it is due fifty-six (56) days from the  
3 date this order is entered. If a motion is filed, petitioner shall file with the court and serve  
4 on respondent an opposition or statement of non-opposition within twenty-eight (28) days of  
5 receipt of the motion, and respondent shall file with the court and serve on petitioner a reply  
6 within fourteen (14) days of receipt of any opposition.

7 5. Petitioner is reminded that all communications with the court must be served on  
8 respondent by mailing a true copy of the document to respondent's counsel. Petitioner  
9 must keep the court informed of any change of address and must comply with the court's  
10 orders in a timely fashion. Failure to do so may result in the dismissal of this action for  
11 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). See *Martinez v.*  
12 *Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

13 **IT IS SO ORDERED.**

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15 Dated: April 7, 2016.

  
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NANDOR J. VADAS  
United States Magistrate Judge